

From: Mark Dyner [mailto:dyner.mark@epamail.epa.gov]
Sent: Tuesday, September 17, 2013 4:33 PM
To: Dyner, Mark
Subject: Fw: NCAP Next Steps -- possible interim approaches for addressing risks to Pacific salmon

Mark Dyner
EPA Office of General Counsel

----- Forwarded by Mark Dyner/DC/USEPA/US on 09/17/2013 04:33 PM -----

From: "Weinberg, David" <DWeinberg@wileyrein.com>
To: Steven Bradbury/DC/USEPA/US@EPA, Catherine Eiden/DC/USEPA/US@EPA
Cc: Mark Dyner/DC/USEPA/US@EPA, "Alberts, Joseph (R)" <JRAAlberts@dow.com>, "Andreas, Eric" <EAndreas@wileyrein.com>, "Meredith, Flax (Meredith.Flux@usdoj.gov)" <Meredith.Flux@usdoj.gov>, "Grisham, Michael (mjgrisham@dow.com)" <mjgrisham@dow.com>, "Hough, Mark (mhough@manainc.com)" <mhough@manainc.com>, "Klise, J. (jmklise@crowell.com)" <jmklise@crowell.com>, "Christopher Landau" <clandau@kirkland.com>, "Menotti, David E. (dmenotti@crowell.com)" <dmenotti@crowell.com>, "Roy Umlauf (rumlauf@forsberg-umlau.com)" <rumlauf@forsberg-umlau.com>, "Doug Nelson" <DNelson@croplifeamerica.org>, "Joshua Saltzman" <JSaltzman@croplifeamerica.org>, "Quarles, Steve" <SQuarles@crowell.com>, "Grosko, Brett (ENRD)" <Brett.Grosko@usdoj.gov>, "Kroessler@forsberg-umlau.com" <kroessler@forsberg-umlau.com>, "mark.haag@usdoj.gov" <mark.haag@usdoj.gov>, "james.a.maysonett@usdoj.gov" <james.a.maysonett@usdoj.gov>
Date: 03/16/2012 11:24 AM
Subject: RE: NCAP Next Steps -- possible interim approaches for addressing risks to Pacific salmon

Dear Mr. Bradbury and Ms. Eiden:

I write on behalf of the industry intervenors in *NCAP v. EPA* (Dow AgroSciences, Crop Life America and RISE) and appellants in *Dow AgroSciences, et al v. NMFS* (Dow AgroSciences, Makhteshim Agan of North America and Cheminova) in response to the appended email.

This group is prepared to participate with EPA in the registrant-only conference call you propose. However, we must know in advance whether the call will be held for purposes of discussing settlement in one or both of the suits referenced above and, if so, which one(s). If so, we will understand any communications made in response to EPA's statements will be subject to the settlement privilege.

From a scheduling standpoint, we propose that the call be held either early in the afternoon on Friday, March 23

(ending no later than 3:30 pm) or on the afternoon of Tuesday, March 27.

Thank you.

David Weinberg



David B. Weinberg
Attorney At Law
Wiley Rein LLP

1776 K Street NW
Washington, DC 20006
Tel: 202.719.7102 | Fax: 202.719.7049
Email: dweinberg@wileyrein.com
www.wileyrein.com

From: Debby Sisco [<mailto:Sisco.Debby@epamail.epa.gov>] **On Behalf Of** Steven Bradbury
Sent: Wednesday, March 14, 2012 1:04 PM
To: general@nwhort.org; heather@wafriends.org; michelle@wawq.org; terry@ofsonline.org; rtomlinson@calstrawberry.org; lori@specialtycrops.org; gludwig@almondboard.com; mmartin@cgtfl.com; candrews@cdpr.ca.gov; george.robinson@agri.idaho.gov; jfults@oda.state.or.us; jim.cowles@agr.wa.gov; jaugustine@biologicaldivesity.org; smashuda@earthjustice.org; agoodin@earthjustice.org; jmklise@crowell.com; zhiatt@grahamdunn.com; Weinberg, David; Andreas, Eric; kroessler@forsberg-umlauf.com; rumlauf@forsberg-umlauf.com; billy@plauchestock.com; eruckert@mwe.com; ross.karen@cdfa.ca.gov; jnelsen@cacitrusmutual.com
Cc: William Jordan; Catherine Eiden; Mark Dyrer
Subject: NCAP Next Steps -- possible interim approaches for addressing risks to Pacific salmon

We are writing to seek your participation in discussions of possible interim approaches for addressing risks to Pacific salmon from the use of six pesticides -- chlorpyrifos, diazinon, malathion, carbaryl, carbofuran, and methomyl. We envision that these approaches would apply only on a temporary basis, to allow completion of the important National Research Council (NRC) study of methodologies for evaluating the risks of pesticides to threatened and endangered species. We are tentatively looking to hold these discussions late in the week of March 19 or early the following week. We apologize in advance for the short notice of this request, but we believe the participation of all the stakeholders in these discussions could be critical to the development of approaches that can gain wide acceptance from both environmental and agricultural interests.

As you know, the issue of Pacific salmon and pesticides is currently the subject of litigation involving two recent NMFS Biological Opinions (BiOps). One of those cases, NCAP v. EPA (challenge in US District Court in Washington state alleging that EPA has failed to implement two NMFS BiOps covering the six pesticides listed above), is currently stayed through the end of March at the direction of the court to allow the parties (environmental organizations, growers and pesticide manufacturers -- including some of you) and other stakeholders to discuss the potential for resolution of this matter outside of court.

In furtherance of this effort, EPA and NMFS staff met last month with state representatives from California, Idaho, Oregon and Washington to discuss possible approaches for developing

interim measures that take advantage of existing federal, state and local programs. We believe we have gathered sufficient input to take the next step and discuss possible approaches with the remaining stakeholders – including the parties to the NCAP litigation. Some of the approaches we heard include the use of existing State water quality, agricultural and USDA programs to achieve appropriately protective in-stream concentration levels for pesticides.

In pursuing this effort, we are fully aware that many obstacles exist to putting in place widely acceptable remedies. While these challenges are considerable, we continue to believe that it is in the best interest of all the stakeholders to work toward a resolution -- one that provides a greater measure of certainty for both environmental and agricultural interests than likely can be achieved through the continued, piecemeal litigation that has thus far only resulted in delaying efforts to create a lasting solution for implementing our endangered species programs.

We will start with separate teleconference calls with the different stakeholder groups – plaintiffs, states, growers, and registrants. If they prove constructive, i.e., if there is support from multiple parties for further conversation and some indication that there begins to be a convergence on specific measures, we will schedule additional meetings or teleconferences to continue discussions.

Please inform us at your earlier convenience of willingness to participate in these discussions by responding to Catherine Eiden at EPA. She may be reached via email at eiden.catherine@epa.gov or by phone at 703-305-7887. We will provide you with additional details as we finalize the schedule for the calls. Thank you in advance for agreement to participate in these important discussions.

Steve Bradbury, Director
Office of Pesticide Programs

NOTICE: This message (including any attachments) from Wiley Rein LLP may constitute an attorney-client communication and may contain information that is PRIVILEGED and CONFIDENTIAL and/or ATTORNEY WORK PRODUCT. If you are not an intended recipient, you are hereby notified that any dissemination of this message is strictly prohibited. If you have received this message in error, please do not read, copy or forward this message. Please permanently delete all copies and any attachments and notify the sender immediately by sending an e-mail to Information@wileyrein.com. As part of our environmental efforts, the firm is WILEY GREEN^(TM). Please consider the environment before printing this email.